

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-III

IA-2161/2025 & IA-1846/2025
And
IB-43(ND)/2025

IN THE MATTER OF IB-43(ND)/2025:

Mr. Dinesh Kumar Garg

Address:

Block-D, House No. 46,
Gali No.5 Khajuri Khas,
Delhi-110094

..... Operational Creditor

Versus

M/s. Adwik Homes Private Limited

Having its office at:

Kh no-535, H. No. D-550, Gali No. 5,
Ashok Nagar, Shahdara, North East Delhi
Delhi-110093

..... Corporate Debtor

AND IN THE MATTER OF IA-2161 (ND)/2025:

Shri Ashutosh Chaturvedi,

Shareholder of M/s Adwik Homes Private Limited

....Applicant

Versus

Mr. Dinesh Kumar Garg

.... Respondent

AND IN THE MATTER OF IA-1846(ND)/2025:

M/s. Adwik Homes Private Limited

Having its office at:

Kh no-535, H. No. D-550, Gali No. 5,
Ashok Nagar, Shahdara, North East Delhi
Delhi-110093

..... Applicant

Versus

Mr. Dinesh Kumar Garg

.... Respondent

Pronounced On: 26.11.2025

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:-

For the Applicant : Mr. Pranav Gupta, Mr. Sanchita Jain, Ms. Unnati Chauhan, Advs.

For the Respondent : Mr. U.N. Singh, Ms. Sandhya Chaturvedi, Advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present application i.e IB-43(ND)/2025 has been filed the Applicant/Operational Creditor before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s. Adwik Homes Private Limited, the Corporate Debtor for an alleged default amount of Rs. 1,15,92,999/-.

2. Brief Background of proceedings:

a) Vide order dated 28.01.2025 this adjudicating authority issued notice to the respondents and also directed the Applicant to file an affidavit stating that the present petition is not collusive. Order dated 28.01.2025 is reproduced below:

"This application has been filed by Mr. Dinesh Kumar Garg, the Operational Creditor herein, under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of CIRP against M/s. Adwik Homes Private Limited, the Corporate Debtor herein for an alleged default of Rs. 1.15 Crore out of which it is stated by the Ld. Counsel appearing on behalf of Applicant that Rs. 41 Lakhs is the principal amount and interest at the rate of 24% is chargeable.

Issue notice to the Respondents.

The Applicant is directed to serve notice along with a copy of the application on the Respondents by all modes and file proof and affidavit

of service within one week. The Respondents are directed to file reply affidavit within one week thereafter.

The Applicant is directed to file an affidavit stating that the present petition is not a collusive one before the next date of hearing.”

- b) In compliance of order dated 28.01.2025 the Applicant has filed an affidavit dated 08.02.2025. The relevant part of the said affidavit is reproduced below:

“3. I affirm that the present application has been filed in a bona fide manner, without any collusion or connivance between the parties involved. This application is initiated solely to recover the legitimate dues owed to the Operational Creditor by the Corporate Debtor.

4. I declare that the facts stated in the petition are true and correct to the best of my knowledge and belief. I have thoroughly reviewed the contents of the petition and confirm that all statements made therein are accurate and based on verifiable information.”

3. Submissions of the Operational Creditor

- i. It is submitted that the Operational Creditor was engaged as a “Manager” in the year 2012 by the Corporate Debtor to oversee the construction-related works that were to be done by the real estate project(s) of the Corporate Debtor and events of the Company. Later, the Operational Creditor was promoted to the position of “Director” by the Corporate Debtor. This engagement as director was governed by the terms and conditions as agreed between the parties, as per the Appointment letter December, 2013.
- ii. It is submitted that the Corporate Debtor has never raised any objection to the quality of work done by the Operational Creditor.
- iii. It is submitted that The Corporate Debtor itself regularly raised monthly salary bills for the Operation Creditor in the said Company but unfortunately in spite of acknowledging these Salary Bills for the operational creditor, the Corporate Debtor started making default in payments for the same.
- iv. It is submitted that the Operational Creditor resigned from the Company of the Corporate Debtor vide resignation letter 20 January 2019, the total

- salary due for the operational Creditor in this period is tune to Rs. 40,25,000/- (Rs. Forty Lakhs Twenty-Five Thousand Only)).
- v. It is further submitted that an outstanding payment of Rs. 13,60,000/- (Rupees Thirteen Lakhs Sixty Thousand only) also remains due. This amount was provided by the Operational Creditor to the company through both cash and account transfers.
- vi. It is submitted that the Corporate Debtor issued a Settlement Certificate to the Operational Creditor to pay off the debt vide Settlement Certificate dated 01 November 2019. The Principal amount as per the Agreement was Rs. 40,25,000/- (Rs. Forty Lakhs Twenty-Five Thousand Only) which was to be paid along with an interest compounded annually at 24 percent till the amount was fully paid i.e., 31st March 2024. Additional amount of Rs. 13,60,000/- (Rupees Thirteen Lakhs Sixty Thousand only) was also agreed to be paid by the company with the same interest in the settlement certificate and Memorandum of Understanding.
- vii. It is submitted that the total amount as per the Certificate between 1st November 2019 and 30th September 2024 is in tune Rs 1,15,92,999/- (Rupees One crore Fifteen lakhs Ninety-two Thousand Nine Hundred Ninety-Nine Only). It is further submitted that amount mentioned herein can be deduced from the Settlement Certificate as well as the Memorandum of Understanding (MoU) dated 1st September 2019 and has the signature and stamp of the Corporate Debtor's authorized person which makes it evident that the amount was supposed to be paid by you within 31st March 2024 as per the agreements executed between the parties.

4. Submissions of the Corporate Debtor

- i. It is submitted that the present application is barred by law of limitation, as according to the claim as made out by the Operational Creditor the alleged amount of Rs.40,25,000/- towards salary, was due to the Operational Creditor as on 20th January,2019. However, the application has been filed on or about 19.11.2024 i.e. after about 05 years & 10 months. It is settled law as per Law of Limitation that the period for recovery of a due and outstanding amount is 03 years and since the

present application has been filed after expiry of the said period of 03 years, the present application is being barred by time.

- ii. It is submitted that the present application is also legally not maintainable as according to clause 17 of the Memorandum of Understanding dated 1st September, 2019, executed between the Corporate Debtor and the operational creditor. Clause 17 of the said Memorandum of Understanding is reproduced below:

"17. All disputes and differences arising out, if or in any way touching upon or concerning the agreement whatsoever shall be referred to the Arbitration or any person appointed with the consent of both the parties. The award of such arbitrator shall be final and binding on the parties to this agreement. It is a term of this agreement that in the event of such arbitrator to whom the matter is originally referred/ being transferred or vacating his office or being unable to act for any reason then both the parties amicably at that time shall appoint any other person to act as a Arbitrator in accordance with the terms of this Agreement."

- iii. It is further submitted that present application is legally not maintainable as the Arbitration & Conciliation Act has overriding effect and since there is specific agreement in the form of above Memorandum of Understanding dated 01.09.2019, for referring the dispute to the Arbitrator, the Operational Creditor is legally estopped from instituting the present application.
- iv. It is submitted that as per the own case of the Operational Creditor, there is alleged due of salary of Rs.40,25,000/- as on 20.01.2019 and without any contract, agreement or any written instrument, the Operational Creditor has claimed interest @ 24% per annum, with only object to bring the claim amount within the pecuniary limits and jurisdiction of this Tribunal as alleged claim of due salary of Rs.40,25,000/- cannot be invoked before this Hon'ble Tribunal.
- v. It is submitted that Operational Creditor has deliberately and malafidely suppressed and concealed the Demand Notice dated 14.08.2024 as served by the Operational Creditor which was duly replied by the Corporate Debtor vide reply dated 24.08.2024. Moreover the Operational Creditor

also sent a subsequent notice dated 17.10.2024 which was duly replied by the Corporate Debtor.

- vi. It is submitted that the claim of the alleged salary due is mentioned as Rs.40,25,000/- and simultaneously the Operational Creditor has himself stated that he has resigned from the company/Corporate Debtor vide resignation letter dated 20th January,2019. However, the Operational Creditor of his own, without any understanding or agreement, hypothetically exaggerated the said alleged due amount of salary by applying the compound interest at the rate of 24% per annum.
- vii. It is submitted that Operational Creditor had joined the Corporate Debtor as Manager on 01.09.2012 at the monthly cumulative salary/emoluments of Rs.1,07,000/- and thereafter the Operational Creditor was appointed as Director on 15.12.2013 and after that the Operational Creditor had resigned as Director of the Corporate Debtor on 20.01.2019. The Operational Creditor was drawing a salary of Rs.1,07,000/- from 01.09.2012 to 31.03.2013 and then Rs.1,14,000/- per month from 01.04.2013 to 31.03.2018 and finally Rs.1,50,000/- per month from 01.04.2018 to 31.08.2019. The Corporate Debtor had made full payment of the salary for the period from 01.09.2012 to 31.03.2016. Subsequently, the Corporate Debtor made payment of Rs.5,00,000/- on 18.08.2017, Rs.4,00,000/- on 30.08.2018 and Rs.1,00,000/- on 20.09.2019 from the remaining salary. In the ledger account/head of Director's salary as maintained with the Corporate Debtor, the due salary is Rs.39,97,000/-.
- viii. It is submitted that the alleged Settlement Certificate dated 01.11.20 19 is only a piece of forged and fabricated document manufactured by the Operational Creditor and the same does not bear the signatures of the Corporate Debtor's Authorised person and the same has been forged and fabricated. Apparently, only the last page is having forged and fabricated signature, while the first two pages are not having even signatures of the corporate debtor.
- ix. It is further submitted that the alleged Settlement Certificate dated 01.11.2019 does not find mention in the Memorandum of Understanding dated 05.12.2023. Moreover a Resolution was passed by the Board of

Directors of the Corporate Debtor company in the meeting held on 24.02.2025, to the effect that the alleged settlement certificate is not proper and having signatures only at last page, and first and second page do not have any signatures of the corporate debtor.

- x. It is submitted that there is no outstanding payment of Rs.13,60,000/- or that the alleged amount was provided by the Operational Creditor to the company through cash and account transfers.

5. Rejoinder submissions of the Operational Creditor

- i. It is submitted that the email dated 14.09.2019 unequivocally acknowledges the subsisting financial liability of the Corporate Debtor towards the Petitioner, quantified at a sum of Rs. 41,25,000/-, arising consequent to the Petitioner's cessation of association with the Corporate Debtor. A conjoint reading of the subsequent MoU dated 05.12.2023 delineates an outstanding amount of Rs. 36,46,200/- under the head of Director's Remuneration, which unequivocally pertains to and is lawfully attributable to the Petitioner.
- ii. It is submitted that the claim towards Director's Remuneration, as lawfully accruing to the Applicant, stands duly established by a conjoint reading of the Corporate Debtor's audited financial statements, balance sheet and Form MGT-7, as filed in compliance with the statutory mandate under the Companies Act, 2013.
- iii. It is submitted that the quantum of the liability disclosed in the latest available audited balance sheet for the Financial Year 2021 corresponds precisely to the remuneration stipulated in the Memorandum of Understanding dated 05.12.2023.
- iv. It is submitted that in addition to the liability reflected under the head "Director's Remuneration Payable", the Memorandum of Understanding dated 05.12.2023 also acknowledges a distinct sum of Rs. 6,60,000/- as being due and payable to the Applicant by the Corporate Debtor. This amount is recognized as a financial debt, independent of the remuneration component, thereby further evidencing the Corporate Debtor's unequivocal acknowledgment of its multifaceted financial liability towards the Applicant.

- v. It is submitted that contention of the Corporate Debtor that the present petition is barred by limitation is untenable as the Settlement Certificate dated 01.11.2019 explicitly incorporated a lock-in period of four years and five months, concluding on 31.03.2024. This lock-in clause constituted a binding representation and commitment by the Corporate Debtor to reimburse the Petitioner during or upon the expiry of the stipulated period. It is only upon the Corporate Debtor's failure to honour its obligation following the culmination of the lock-in period that the cause of action arose in favour of the Petitioner. Accordingly, the present petition is well within the prescribed period of limitation.
- vi. It is submitted that Memorandum of Understanding dated 01.09.2019 does contain an arbitration clause and may be binding inter se the signatory parties, the said MoU was not executed between the Corporate Debtor and the Applicant. The said MoU was entered into between the Corporate Debtor and a third party, and as such, does not create any contractual obligations or rights enforceable against the Applicant.
- vii. It is submitted that the email dated 14.09.2019, issued by the Corporate Debtor, expressly confirms the total outstanding dues payable to the Petitioner as on 31.08.2019, amounting to Rs. 41,25,000/-. Subsequent to the said communication, the Petitioner received a payment of Rs.1,00,000/- on 23.09.2019 from the Corporate Debtor, thereby leaving a principal outstanding operational debt of Rs. 40,25,000/-, which is also reflected and acknowledged in the Settlement Certificate dated 01.11.2019.
- viii. It is further submitted that the aforesaid Settlement Certificate expressly stipulates that the said amount shall carry an interest at the rate of 24% per annum.
- ix. It is submitted that Agenda Item No. 5 of the Resolution/Minutes of the Meeting dated 24.02.2025 does not contain any categorical or explicit denial regarding the veracity or authenticity of the Settlement Certificate in question. The remarks made by Mr. Sharad Singhal, one

of the parties to the said Settlement Certificate, are ambiguous and lack substantive basis.

6. ANALYSIS AND FINDINGS :

- i. We have heard the submissions of counsels appearing for the parties and perused the records.
- ii. In brief it is the case of the Operational Creditor that Operational Creditor was engaged as a Manager in the year 2012 by the Corporate Debtor and was later promoted as director in 2013. The Operational Creditor resigned on 20.01.2019 and the total salary due for the operational Creditor is Rs. 40,25,000/-. Moreover an additional amount of Rs. 13,60,000/- was also agreed to be paid by the company as per the settlement cum investment certificate dated 01.11.2019.
- iii. Per contra, in brief, it is the case of the Corporate Debtor that the alleged due of salary of Rs.40,25,000/- as on 20.01.2019 is without any contract or any written instrument and Settlement Certificate dated 01. 11.20 19 is forged and fabricated document. Moreover no payment of Rs.13,60,000/- was made by the Operational Creditor to the Corporate Debtor.
- iv. In part IV of the Application the Operational Creditor has only mentioned that *“An outstanding payment of Rs. 13,60,000/- (Rupees Thirteen Lakhs Sixty Thousand only) also remains due. This amount was provided by the Operational Creditor to the company through both cash and account transfers.”* However the Operational Creditor has not furnished any other details about nature or purpose about the said transaction.
- v. The Operational Creditor has contended that an amount of Rs. 13,60,000/- was paid to the Corporate Debtor through both cash and account transfers. However the Operational Creditor has neither placed on record any bank statement or any other document to show that an amount of Rs. 13,60,000/- was paid to the Corporate Debtor through cash or via account transfer to the Corporate Debtor, nor has provided any detail as to when the said payment was made.

- vi. Moreover the Operational Creditor has not placed any material on record any communication to suggest that the said payment was made at the request of the Corporate Debtor.
- vii. The Operational Creditor has placed reliance on email dated 14.09.2019, the relevant part of the said email is reproduced below:

Dear Sir,

As you have requested to know your due salary till August'2019, the detail is given in the attachment.

Please acknowledge and let me know if you have any query.

Thanks & Regards

V. R. Jha

8130288500

Dear Mr. Dinesh Kumar Garg,

As discussed in the common meeting at our office on 3rd September, 2019 with all Employees and Directors of M/s Adwik Homes Pvt. Ltd, and, you have requested to know the dues and unpaid amount towards your salary a/c till August-2019 as per accounts department is given below: Current Amount Rs.41,25,000/-

In Words (Rupees Forty One Lakhs Twenty Five Thousand only)

Please acknowledge if there is any difference in the amount written above.”

- viii. On perusal of the said email it is apparent that Rs.41,25,000/- was due towards salary of the Operational Creditor.
- ix. The Operational Creditor has also placed reliance on a Settlement Cum Investment Certificate dated 01.11.2019. Vide the said Settlement cum investment certificate the amount due was converted into “Investment/Loan” to the Company. The relevant part of the Settlement Cum Investment Certificate dated 01.11.2019 is reproduced below:
- “We hereby issue this present Settlement cum investment certificate of the dues on the 1st day of November 2019 in the form of investment concerning the total outstanding salary dues to be paid by the company in favor of Mr. Dinesh Kumar Garg, s/o Mr. Ravindra Kumar Garg, residing at Block-*

D, House no 46, Gali no 5, Khajuri Khas, Delhi 110094, who is the erstwhile director and served as the director of our company from December 2013 and tendered his resignation on 20th January 2019. In view of the same, his total outstanding salary pending to be paid is Rs. 40,25,000/- (Rupees Forty Lakhs Twenty-Five Thousand only). Also, an outstanding payment of Rs. 13,60,000/- (Rupees Thirteen Lakhs Sixty Thousand only) remains due. This amount was provided by Mr. Dinesh Kumar Garg to the company through both cash and account transfers.

In this regard, the company is facing some financial difficulty and, therefore, issuing this present certificate with the consent of Mr. Dinesh Kumar Garg, the erstwhile director, to consider the aforesaid amount in the form of an Investment/loan to the company and terms of the present settlement are given in details as follows:

I. TERMS AND CONDITIONS:

1. Lock-in Period: *The investment made by both parties shall be subject to a locking period of 4 years 5 months from the date of execution of this Certificate, i.e., until 31.03.2024. During this period, Mr. Dinesh Kumar Garg cannot individually terminate this certificate or seek a refund of the invested amount.*

2. Interest Payment: *The Company agrees to pay an interest of 24% per annum on the total invested amount. The interest shall accrue from the date of investment until the expiry of the locking period.*

3. Redemption: *The invested amount along with accrued interest can only be redeemed by the Investor after the expiry of the locking period, i.e., after 31.03.2024. The interest shall continue to accrue on the outstanding amount until such time as the full amount is settled by the Company.”*

- x. In this regard it is pertinent to mention that the Corporate Debtor has contended that this Settlement cum investment certificate is a forged and fabricated document, the first two pages are not having signatures of the corporate debtor and only on the last page signatures of Corporate Debtor as forged. It was further contended that there is no stamp paper or notarization of the Settlement cum investment Agreement dated

01.11.2019 or signatures of any witness showing the execution of the said Agreement.

- xi. At this juncture it is pertinent to refer to the judgement of Hon'ble Supreme Court in its judgement in the case of Global Credit Capital Ltd and Anr. V. Sach Marketing Pvt Ltd and Anr reported in 2024 SCC OnLine SC 649 / [CIVIL APPEAL NO. 1143 OF 2022]. Wherein the Hon'ble Supreme Court has observed that :

“a. There cannot be a debt within the meaning of subsection (11) of section 5 of the IB Code unless there is a claim within the meaning of sub-section (6) of section 5 of thereof;

b. The test to determine whether a debt is a financial debt within the meaning of sub-section (8) of section 5 is the existence of a debt along with interest, if any, which is disbursed against the consideration for the time value of money. The cases covered by categories (a) to (i) of sub-section (8) must satisfy the said test laid down by the earlier part of sub-section (8) of section 5;

c. While deciding the issue of whether a debt is a financial debt or an operational debt arising out of a transaction covered by an agreement or arrangement in writing, it is necessary to ascertain what is the real nature of the transaction reflected in the writing; and

d. Where one party owes a debt to another and when the creditor is claiming under a written agreement/ arrangement providing for rendering 'service', the debt is an operational debt only if the claim subject matter of the debt has some connection or co-relation with the 'service' subject matter of the transaction.

- xii. As provided under section 5(21) of the Code, an Operational Debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the re-payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. Moreover the section 5(20) of the Code provides that an 'Operational Creditor' meaning a person to whom an Operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

xiii. At this stage, it becomes relevant to take note of the judgment of the coordinate bench (Kolkata Bench) of this Adjudicating Authority in the case of Akshat Pandey V. Avighna Films Private Limited (C.P. (IB) No. 178/KB/2021) wherein it has been held that Investment made by the director of the Company does not fall under the purview of an Operational Debt under the Code. The relevant part of the order is reproduced below:

“However in this instant matter the Petitioner, who is also one of the director of the Corporate Debtor, invested money in the Corporate Debtor for production of a movie. In light of the above facts and circumstances we are of the view that an Investment made by the director of the Company does not fall under the purview of an Operational Debt under the Code. Hence, C.P. (IB) No. 178/KB/2021 the stands dismissed.”

xiv. In the present case, the outstanding amount was converted with the consent of the Operational Creditor as investment to the Corporate Debtor vide Settlement cum investment certificate dated 01.11.2019. Therefore in the light of law laid down by the Hon’ble Supreme Court in the case of Global Credit Capital Ltd and Anr. V. Sach Marketing Pvt Ltd and the order passed by the Coordinate Bench in the case of Akshat Pandey V. Avighna Films Private Limited, we are of the considered view that outstanding amount in the present case do not fall within the purview of an Operational Debt under section 5(21) the Code.

7. Accordingly, in view of the above observations application bearing CP(IB) No. 43(ND)/2025 filed by Mr. Dinesh Kumar Garg (Operational Creditor) under Section 9 of the Code read with rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Adwik Homes Private Limited (‘Corporate Debtor’) stands **dismissed**.
8. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (‘IBBI’) for their record.
9. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

I.A. -2161/2025

1. The present application has been filed by Shri Ashutosh Chaturvedi who is a shareholder of the Corporate Debtor has filed an application i.e. I.A. 2161(ND)/2025 under Section 65 of IBC, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules") seeking dismissal of IB-43(ND)/2025 filed under Section 9 of the Code with exemplary cost and for imposing penalty upon the Operational Creditor.
2. The prayers sought in present I.A.-2161(ND)/2025 are as under:-

"It is, therefore, most respectfully prayed that the present application as filed by the applicant may kindly be allowed and the petition filed under Section 9 of the Code,2016, by the Respondent No.1/Operational Creditor may kindly be dismissed, with exemplary costs and also penalty as provided under Section 65 of the Code,2016, may kindly be imposed upon the Respondent No.1/ Operational Creditor for filing petition with malicious, dishonest and fraudulent intentions, coupled with forged and fabricated documents. It is further most respectfully prayed that the proceedings of the petition filed under Section 9 of the Code,2016, by the Respondent No.1/Operational Creditor may kindly be stayed till the adjudication & disposal of the application as filed by the applicant under Section 65 of the Code,2016, for the ends of justice."
3. The Applicant has filed the present application on the following grounds:
 - A. *BECAUSE the present petition has been filed by the Respondent No.1/Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 and the said provision of Section 9 of the Code, specifically says that an application can be initiated of corporate insolvency resolution process by Operational Creditor in respect of "operational debt". It is submitted that the "operational creditor" is defined under the IBC,2016, which says "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred" The Code,2016, also defines the "operational debt", which says "operational debt" means a claim in respect of the provisions of goods or services including employment or a debt in respect of the (payment) of dues arising under*

any law for the time being in force and payable to the Central Gout., any State Gout. Or any local authority".

B. BECAUSE as per above submission, the claim as made out by the Respondent No.1/Operational Creditor for the alleged amount of Rs.1,15,92,999/- as Operational Debt is totally unwarranted, unjustified and in contrast to the provisions & definitions, as submitted hereinbefore. In this respect it is submitted that it is the own case and claim of the Respondent No.1/Operational Creditor, that there are outstanding salary of Rs.40,25,000/- and alleged outstanding loan amount of Rs.13,60,000/-. It is further the case of the Respondent No.1/Operational Creditor that he allegedly made the investment of the said outstanding salary and outstanding loan amount and in support thereof, the Respondent No.1/Operational Creditor has filed a fabricated and forged document i.e. Settlement cum Investment Certificate dated 1st November,2019. On such assertion and contentions of the Respondent No.1/Operational Creditor of making alleged investment, the present application/petition as filed under Section 9 of the IBC, 2016 is legally not maintainable, as the same pertains to the "Operational Debt", and since the Respondent No.1 /Operational Creditor has allegedly made investment of the alleged amount, then it does not falls under the definition of "Operational Debt" as per provisions of IBC,2016. The Respondent No.1/ Operational Creditor has wrongly and falsely invoked the provisions of Section 9 of the IBC,2016, while setting up his case of 'operational debt' when the case of the Respondent No.1/Operational Creditor comes under the category of 'Operational Debt' and as such the present petition deserves to be dismissed outrightly.

C. BECAUSE the Respondent No.1/Operational Creditor cannot take advantage of his wrongs and misdeeds, based on the forged and fabricated document i.e. alleged Settlement cum Investment Certificate dated 01.11.2019. It is apparently clear that the said alleged Certificate is having 03 pages, while page 1 & 2 are not signed by the Corporate Debtor and so far, the signatures at Page 3 signed by the Director of

Corporate Debtor company are not binding upon the Company i.e. Corporate Debtors no Resolution was ever passed by the Board of Directors of the company, authorising and empowering Mr.Sharad Singhal, who happens to be a close relative of the Respondent No.1/Operational Creditor. Thus the petition as filed by the Respondent No.1/Operational Creditor deserves dismissal. Section 65 of the IBC,2016, says that-

“65. Fraudulent or malicious initiation of proceedings-

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extent to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extent to one crore rupees.

(3) If any person initiates the pre-packaged insolvency resolution process-

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.”

D. BECAUSE the Respondent No.1/Operational Creditor has not come before this Hon'ble Tribunal with clean hands and has not stated the true and correct facts, rather suppressed the true facts from this Hon'ble Tribunal, only due to malicious intentions to cause irreparable losses and damages to the company i.e. Corporate Debtor, who are carrying the business of construction of various residential projects and the Respondent No.1/Operational Creditor is hellbent to derail the said projects of the company and in this way the company will never

overcome and will be ruined. Since the applicant is having substantive stake being the shareholder, therefore, the applicant has valuable rights and interests in the company as well as to safeguard the said rights and interests.

E. BECAUSE the present petition is gross abuse and misuse of process of law and has been filed with dishonest, fraudulent and malicious intentions, which are apparent from the fact that the petition is based upon a forged and fabricated document i.e. Settlement cum Investment Certificate dated 01.11.20 19.

F. BECAUSE one hand the Respondent No.1/Operational Creditor has made story of investment of amounts of outstanding salary of Rs.40,25,000/- and outstanding loan of Rs.13,60,000/-, in the company i.e. Respondent No.2/CD and on the other hand, in the said alleged Settlement cum Investment Certificate dated 01.11.2019, the Respondent No.1/Operational Creditor has alleged compoundable interest@ 24% p.a. As settled law, in case of investment, the claim as return on such investment falls in the definition of "Profit" and admittedly, such claim of Profit does not comes under the "Operational Debt". Admittedly, the Respondent No.1 /Operational Creditor has maliciously and wrongly made claim of operational debt and filed petition under Section 9 of IBC,2016, when as per his own case, there is no 'operational debt', hence the petition in hand is legally not maintainable and liable to be outrightly dismissed.

G. BECAUSE no cause of action has arisen in favour of the Respondent No.1/ Operational Creditor to institute the present petition and even the claims as made out by the Respondent No.1/Operational Creditor does not fall in the ambit of Insolvency & Bankruptcy Code, 2016.

4. The facts and submissions made by the Applicant i.e. Shri Ashutosh Chaturvedi in the Interlocutory Application i.e IA-2161(ND)/2025 are similar to the facts and submissions made by the Corporate Debtor (Respondent in IB-43(ND)/2025) in the reply affidavit filed therein. Also, the facts and submissions made by the Operational Creditor/Applicant in IB-43(ND)/2025) are similar to facts and submissions made in IA-

2161(ND)/2025. Therefore, they are not being repeated for the sake of brevity.

5. Section 65 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) addresses the wrongful initiation of insolvency proceedings undertaken with fraudulent or malicious intent. Its primary objective is to curb the abuse of the insolvency mechanism by debtors or creditors who seek to obtain an undue benefit by improperly triggering the process.
6. Hon’ble NCLAT in its judgement in the case of Amour Infrastructure LLP vs. Digital Integrated Technologies Pvt. Ltd, CA (AT) (Ins) No. 884 of 2022, wherein it has been held that for proving the ingredients of Section 65 of IBC, the same has to be backed by adequate pleadings and findings.
7. At this juncture we may take a note of the order passed by a Coordinate Bench (N.C.L.T New Delhi Bench-V) in the matter of M/s. Flycreative Online Private Limited v. GO Airlines (India) Limited, (Int. Petition No. 68/2023 in Company Petition No. 264/PB/2023), dated 10th December 2024, under Para No. 10, has observed as follows:

“10. In terms of Section 65 of the Insolvency and Bankruptcy Code, 2016, there must be substantial and corroborative evidence to explicitly prove ‘fraudulent intent’, ‘malice’ and ‘mens rea’ on part of the CD by way of specific documentary evidence and also that the Applicant approached with malicious intent for any purpose other than for the resolution of insolvency.”

8. Further, Hon’ble NCLAT in its judgement in the case of Acute Daily Media Pvt. Ltd. and Ors. v. Rockman Advertising and Marketing (India) Ltd. and Ors., CA (AT) (Ins) No. 1480 of 2024 has observed that:

“32. While returning our findings on the tenability of the impugned order, we must at the very outset add that that to prove any transaction to be collusive and fraudulent in nature, the degree of proof and evidence required should be beyond reasonable doubt and we propose to apply the same standard of proof to the facts of the present case.”

9. The averments raised in the present Application i.e. IA-2161/2025 are similar and have already been considered in the Section 9 Application i.e IB-43(ND)/2025. Grounds and averments raised by the Applicant in the present Application are not sufficient to explicitly establish, with the

requisite degree of certainty the elements of 'malice' or 'fraudulent intent', on part of the Corporate Debtor. The standard of proof and evidence which is required is beyond reasonable doubt has not been satisfied. In view of the above observations, the present Application stands dismissed accordingly.

I.A. -1846/2025

1. The present application i.e IA-1846(ND)/2025 has been filed the Applicant/Corporate Debtor before this Adjudicating Authority under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), read with rule 11 of the NCLT Rules 2016 seeking the following prayers :

"It is, therefore, most respectfully prayed that the Hon'ble Tribunal may be graciously pleased enough to reject an application bearing IB No. 43/ND/2025 filed by the respondent under section 9 of the IB Code, 2016 for initiation of the Corporate Insolvency Resolution Process against the Applicant-Corporate Debtor, as having no power and jurisdiction because of the suppression and concealment of material facts and forged and fabricated documents by the respondent before the Hon'ble Tribunal and the respondent was not empowered and entitled for institution of the application/Petition bearing IB. No. 43/ND/2025 for initiation of Corporate Insolvency Resolution Process against the Applicant-Corporate Debtor.

Any other relief which this Hon'ble Tribunal may deems fit and proper be also granted in favour of the applicant-corporate debtor."

2. In view of the order passed in IA-2161/2025 wherein this Adjudicatory Authority has dismissed the application filed under section 65 of the Code and dismissed the application IB-43(ND)/2025 filed under section 9 of the Code, therefore the prayers in the present application do not survive. IA-1846/2025 disposed of accordingly.

-Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)**

-Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**